

Senate Bill 547

By: Senators Seabaugh of the 28th, Cagle of the 49th, Johnson of the 1st, Williams of the 19th and Stephens of the 27th

AS PASSED

AN ACT

To amend Chapter 39A of Title 43 of the Official Code of Georgia Annotated, relating to real estate appraisers, so as to provide for the recusal of board members when a conflict of interest exists; to provide for circumstances for removal of board members; to provide standards for offering education courses on appraising; to provide for certain conditions for the investigation of appraisers; to amend Chapter 40 of Title 43 of the Official Code of Georgia Annotated, relating to real estate brokers and salespersons, so as to provide for the recusal of members of the Georgia Real Estate Commission; to provide for certain reasons for removing a member of the Georgia Real Estate Commission; to provide for grounds for denying a real estate license; to provide for the requirements for approving a license to a real estate licensing school; to allow for the regulation of granting, revoking, or suspending a real estate license; to provide for certain provisions relating to sanctions for violations committed by licensees, schools, and instructors; to provide for certain provisions relating to investigating complaints reported to the Georgia Real Estate Commission; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 39A of Title 43 of the Official Code of Georgia Annotated, relating to real estate appraisers, is amended by striking Code Section 43-39A-3, relating to the Georgia Real Estate Appraisers Board, requirements for membership, removal from the board, meetings, and compensation, and inserting in its place a new Code section to read as follows:

"43-39A-3.

(a) There is created the Georgia Real Estate Appraisers Board, which shall consist of five members. All members must be residents of Georgia. One member shall be a public member. The public member of the board shall not be connected in any way with the

1 practice of real estate appraisal, real estate brokerage, or mortgage lending. Four members
2 shall be real estate appraisers who have been actively engaged in the real estate appraisal
3 business for at least three years. In appointing real estate appraisers to the board, while not
4 automatically excluding other appraisers, the Governor shall give preference to real estate
5 appraisers who do not hold an active, occupational license which authorizes their work in
6 real estate brokerage or mortgage lending activities, who do not have a financial interest
7 in any real estate brokerage firm or mortgage lending firm, and who are not employees of
8 real estate brokerage firms or mortgage lending firms.

9 (b) The Governor shall appoint the members of the board, subject to confirmation by the
10 Senate, with consideration given to appropriate geographic representation and to areas of
11 appraisal expertise. Any such appointments made when the Senate is not in session shall
12 be effective until acted upon by the Senate.

13 (c) A member of the board shall recuse himself or herself from voting on matters in which
14 the member has a conflict of interest. Whenever an investigation authorized by this chapter
15 results in the board's initiating a contested case under Chapter 13 of Title 50, the 'Georgia
16 Administrative Procedure Act,' against a member, such member shall be recused from
17 voting on such matter and may not discuss the matter with other board members or be
18 present when the board discusses or votes on such matter.

19 (d) The term of each member of the board shall be five years, except that one of the
20 successors to the two members first appointed to serve until July 1, 1992, shall be
21 appointed to serve until July 1, 1994, and one of the successors to the two members first
22 appointed to serve until July 1, 1993, shall be appointed to serve until July 1, 1995. In the
23 event of a vacancy, the Governor shall appoint a person to fill such vacancy and the person
24 so appointed shall serve for the remainder of the unexpired term.

25 (e) Upon expiration of their terms, members of the board shall continue to hold office until
26 the appointment and qualification of their successors. The Governor, after giving notice
27 and opportunity for a hearing, may remove from office any member of the board for any
28 of the following:

- 29 (1) Inability to perform or neglecting to perform the duties required of members;
- 30 (2) Incompetence;
- 31 (3) Dishonest conduct; or
- 32 (4) Having a disciplinary sanction other than a citation authorized by this chapter
33 imposed by any professional licensing agency on such member's right to practice a trade
34 or profession.

1 (f) The members of the board shall annually elect a chairperson from among the members
2 to preside at board meetings.

3 (g) The board shall meet at least once each calendar quarter, or as often as is necessary,
4 and remain in session as long as the chairperson shall deem it necessary to give full
5 consideration to the business before the board. A quorum of the board shall be three
6 members. Members of the board or others may be designated by the chairperson of the
7 board, in a spirit of cooperation, to confer with similar boards of other states, attend
8 interstate meetings, and generally do such acts and things as may seem advisable to the
9 board in the advancement of the profession and the standards of real estate appraisal
10 activity.

11 (h) Each member of the board shall receive as compensation for each day actually spent
12 on his or her official duties at scheduled meetings and for time actually required in
13 traveling to and from its meetings, not to exceed one day's traveling time, the sum of
14 \$25.00 and his or her actual and necessary expenses incurred in the performance of official
15 duties.

16 (i) The commission shall supply staff support for the board. The commissioner shall serve
17 as executive officer of the board. The commissioner shall be charged with the duties and
18 powers as delegated by the board."

19 **SECTION 2.**

20 Said chapter is further amended by striking subsection (c) of Code Section 43-39A-8, relating
21 to establishing appraiser classifications to comply with federal law, continuing education
22 courses required for renewing classification, and approval of instructors, and inserting a new
23 subsection (c) to read as follows:

24 "(c) The board, through its rules and regulations, shall establish standards for offering of
25 all education courses required by this Code section and for the approval of schools and
26 instructors to offer the education courses required by this chapter. Each approved school
27 must comply with Code Sections 43-40-15 through 43-40-32. Each approved school must
28 designate an individual approved by the board to act as its director and such designated
29 individual shall be responsible for assuring that the approved school complies with the
30 requirements of this chapter and rules and regulations promulgated under this chapter. No
31 school approval shall be granted to a school unless the school authorizes its director to bind
32 the school to any settlement of a contested case before the board as defined in Chapter 13
33 of Title 50, the 'Georgia Administrative Procedure Act.' Violations of this chapter or its

1 attendant rules and regulations by an approved school shall subject the school and its
2 director to sanction as authorized by this chapter."

3 SECTION 3.

4 Said chapter is further amended by striking subsections (a) and (d) of Code Section
5 43-39A-22, relating to investigations, subpoenas, confidentiality, access to records, and the
6 publication of the names of disciplined appraisers and schools, and inserting in its place a
7 new Code section to read as follows:

8 "(a) The board may, upon its own motion, and shall, upon the sworn written request of any
9 person, investigate the actions of any appraiser, applicant, or school approved by the board;
10 provided, however, that, whenever a request for investigation involves an appraisal report
11 which varies from a sales, lease, or exchange price by 20 percent or less, or, if the appraiser
12 is acting as a tax consultant, which varies from the tax assessor's value by 20 percent or
13 less, the board may in its discretion decline to conduct an investigation. Except for
14 investigations of applicants for appraiser classifications, investigations of allegations of
15 fraudulent conduct, or investigations of possible violations of this chapter which have been
16 litigated in the courts or arise from litigation in the courts, the board shall not initiate an
17 investigation on its own motion or upon a sworn written request for investigation unless
18 the act or acts which may constitute a violation of this chapter occurred within five years
19 of the initiation of the investigation."

20 "(d) The results of all investigations shall be reported only to the board or to the
21 commissioner and the records of such investigations shall not be subject to subpoena in
22 civil actions. Records of investigations shall be kept by the board and no part of any
23 investigative record shall be released for any purpose other than a hearing before the board
24 or its designated hearing officer, review by another law enforcement agency or lawful
25 licensing authority upon issuance of a subpoena from such agency or authority or at the
26 discretion of the board upon an affirmative vote of a majority of the quorum of the board,
27 review by the appraiser or applicant who is the subject of the notice of hearing after its
28 service, review by the board's legal counsel, or an appeal of a decision by the board to a
29 court of competent jurisdiction; provided, however, if an investigation authorized by this
30 chapter results in the board's filing a notice of hearing or entering into settlement
31 discussions with a member of the board, the commissioner shall immediately notify the
32 Governor or the Governor's legal counsel of such action by the board. After service of a

1 notice of hearing, the appraiser or applicant who is the subject of the notice of hearing shall
2 have a right to obtain a copy of the investigative record pertaining to the hearing."

3 **SECTION 4.**

4 Chapter 40 of Title 43 of the Official Code of Georgia Annotated, relating to real estate
5 brokers and salespersons, is amended by striking Code Section 43-40-2, relating to the
6 creation, meetings, compensation, budget, reports, and rules and regulations of the Georgia
7 Real Estate Commission, and inserting in its place a new Code section to read as follows:

8 "43-40-2.

9 (a) There is created the Georgia Real Estate Commission, which shall be composed of six
10 members, each of whom shall be appointed by the Governor and confirmed by the Senate
11 for a term of five years. Any such appointments made when the Senate is not in session
12 shall be effective until acted upon by the Senate. Five of the members shall be licensees
13 who shall have been residents of this state and actively engaged in the real estate business
14 for five years. The sixth member of the commission shall have no connection with the real
15 estate industry whatsoever but shall have a recognized interest in consumer affairs and in
16 consumer protection concerns.

17 (b) Members of the commission shall serve until their successors are appointed and
18 qualified. Vacancies on the commission shall be filled by appointment of a successor for
19 the unexpired term of office by the Governor. Four members shall constitute a quorum for
20 the transaction of any business of the commission. The commission shall organize by
21 selecting from its members a chairperson and may do all things necessary and convenient
22 to carry this chapter into effect. The commission shall meet at least once a month, or as
23 often as is necessary, and remain in session as long as the chairperson thereof shall deem
24 it necessary to give full consideration to the business before the commission. Members of
25 the commission or others may be designated by the chairperson of the commission, in a
26 spirit of cooperation and coordination, to confer with similar commissions of other states,
27 attend interstate meetings, and generally do such acts and things as may seem advisable to
28 the commission in the advancement of the profession and the standards of the real estate
29 business.

30 (c) A member of the commission shall recuse himself or herself from voting on matters
31 in which the member has a conflict of interest. Whenever an investigation authorized by

1 this chapter results in the commission's initiating a contested case under Chapter 13 of
2 Title 50, the 'Georgia Administrative Procedure Act,' against a member, such member shall
3 be recused from voting on such matter and may not discuss such matter with other
4 commission members or be present when the commission discusses or votes on such
5 matter.

6 (d) The Governor, after giving notice and an opportunity for a hearing, may remove from
7 office any member of the commission for any of the following:

8 (1) Inability to perform or neglecting to perform the duties required of members;

9 (2) Incompetence;

10 (3) Dishonest conduct; or

11 (4) Having a disciplinary sanction, other than a citation authorized by this chapter,
12 imposed by any professional licensing agency on such member's right to practice a trade
13 or profession.

14 (e) The commission is authorized to pass rules and regulations, not inconsistent with this
15 chapter, relating to the professional conduct of licensees and the administration of this
16 chapter.

17 (f) Each member of the commission shall receive as compensation for each day actually
18 spent on his or her official duties at scheduled meetings and time actually required in
19 traveling to and from its meetings, not to exceed one day's traveling time, the sum of
20 \$25.00 and his or her actual and necessary expenses incurred in the performance of his or
21 her official duties.

22 (g) The commission, through its chairperson, shall file a written report with the Governor
23 and a copy thereof with both houses of the General Assembly on or before the second
24 Tuesday in January of each year. The Governor may request a preliminary report prior to
25 such an annual report. The report shall include a summary of all actions taken by the
26 commission, a financial report of income and disbursements, staff personnel, and number
27 of persons licensed by the commission. The report shall further delineate steps taken in
28 education and research to disseminate information so that all licensees can be better
29 informed in order to protect the public. The commission shall also outline a program of
30 education and research for each ensuing year, for which a line appropriation shall be
31 requested.

32 (h) The commission shall be a budget unit as defined in Part 1 of Article 4 of Chapter 12
33 of Title 45, the 'Budget Act'; provided, however, that the commission shall be assigned for
34 administrative purposes only to the office of the Secretary of State."

SECTION 5.

Said chapter is further amended by striking subsection (a) of Code Section 43-40-8, relating to license requirements, and inserting in its place a new subsection (a) to read as follows:

"(a) In order to qualify for a community association manager's license, an applicant must:

(1) Have attained the age of 18 years;

(2) Be a resident of the State of Georgia, unless that person has fully complied with the provisions of Code Section 43-40-9;

(3) Be a high school graduate or the holder of a certificate of equivalency;

(4) Furnish evidence of completion of at least 25 in-class hours in a community association manager's course or courses of study approved by the commission; and

(5) Stand and pass a real estate examination administered by or approved by the commission covering generally the matters confronting real estate brokers who provide community association management services and community association managers after completing the requirements of paragraph (4) of this subsection.

Failure to meet any of these requirements shall be grounds for denial of license without a hearing."

SECTION 6.

Said chapter is further amended by striking subsection (i) of Code Section 43-40-8, relating to license requirements, and inserting in its place a new subsection (i) to read as follows:

"(i) The commission, through its rules and regulations, shall establish standards for the approval of schools and instructors to offer the education courses required by this chapter.

Each approved school must comply with Code Sections 43-40-15 through 43-40-32. Each approved school must designate an individual approved by the commission to act as its director and such designated individual shall be responsible for assuring that the approved school complies with the requirements of this chapter and rules and regulations promulgated under this chapter. An approved school must authorize its director to bind the school to any settlement of a contested case before the commission as defined in Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.' The commission, through its rules and regulations, shall establish standards for the offering of the prelicense education courses required by this chapter by methods of instruction, which it deems to be educationally sound, other than in-class instruction. The commission, through its rules and regulations, may establish standards for the offering of continuing education courses

1 required by this chapter by methods of instruction, which it deems to be educationally
2 sound, other than in-class instruction."

3 **SECTION 7.**

4 Said chapter is further amended by striking Code Section 43-40-10, relating to the granting
5 of a real estate broker's license, associate broker's license, salesperson's license, or
6 community association manager's license to a firm, and inserting in its place a new Code
7 section to read as follows:

8 "43-40-10.

9 No broker's license shall be granted to a firm unless:

10 (1) Said firm designates an individual licensed as a broker as its qualifying broker who
11 shall be responsible for assuring that the firm and its affiliated licensees comply with the
12 provisions of this chapter and its attendant rules and regulations; and

13 (2) Said firm authorizes its qualifying broker to bind the firm to any settlement of a
14 contested case before the commission as defined in Chapter 13 of Title 50, the 'Georgia
15 Administrative Procedure Act,' in which said firm may be a named respondent.

16 Violations of this chapter or its rules and regulations by a firm licensed as a broker shall
17 subject the license of the qualifying broker to sanction as authorized by this chapter. No
18 broker's license shall be granted to a firm unless every person who acts as a licensee for
19 such firm shall hold a real estate license."

20 **SECTION 8.**

21 Said chapter is further amended by striking paragraphs (17) and (26) of subsection (b) of
22 Code Section 43-40-25, relating to sanctions for violations committed by licensees, schools,
23 and instructors and unfair trade practices, and inserting in their places new paragraphs (17)
24 and (26) to read as follows:

25 "(17) Paying a commission or compensation to any person for performing the services
26 of a real estate licensee who has not first secured the appropriate license under this
27 chapter or is not cooperating as a nonresident who is licensed in such nonresident's state
28 or foreign country of residence, provided that nothing contained in this subsection or any
29 other provision of this Code section shall be construed so as to prohibit the payment of
30 earned commissions:

(A) To the estate or heirs of a deceased real estate licensee when such deceased real estate licensee had a valid Georgia real estate license in effect at the time the commission was earned and at the time of such person's death;

(B) To a citizen of another country acting as a referral agent if that country does not license real estate brokers and if the Georgia licensee paying such commission or compensation obtains and maintains reasonable written evidence that the payee is a citizen of said other country, is not a resident of this country, and is in the business of brokering real estate in said other country; or

(C) By the brokerage firm holding a licensee's license to an unlicensed firm in which an individual licensee affiliated with the brokerage firm owns more than a 20 percent interest provided:

(i) Such individual licensee earned the commission in behalf of the brokerage firm;

(ii) Such unlicensed firm does not perform real estate brokerage activity;

(iii) The affiliated licensee and the brokerage firm have a written agreement authorizing the payment to the unlicensed firm; and

(iv) The brokerage firm obtains and retains written evidence that the affiliated licensee owns more than a 20 percent interest in the unlicensed firm to which the compensation will be paid;"

"(26) Obtaining a brokerage agreement, a sales contract, or a lease from any owner, purchaser, or tenant while knowing or having reason to believe that another broker has an exclusive brokerage agreement with such owner, purchaser, or tenant, unless the licensee has written permission from the broker having the first exclusive brokerage agreement; provided, however, that notwithstanding the provisions of this paragraph, a licensee shall be permitted to present a proposal or bid for community association management if requested to do so in writing from a community association board of directors;"

SECTION 9.

Said chapter is further amended by striking subsection (d) of Code Section 43-40-27, relating to the investigation of complaints reported to the commission, and inserting in its place a new subsection (d) to read as follows:

"(d) The results of all investigations shall be reported only to the commission or to the commissioner, and the records of such investigations shall not be subject to subpoena in civil actions. Records of investigations shall be kept by the commission and no part of any

1 investigative record shall be released for any purpose other than a hearing before the
2 commission or its designated hearing officer, review by another law enforcement agency
3 or lawful licensing authority upon issuance of a subpoena from such agency or authority
4 or at the discretion of the commission upon an affirmative vote of a majority of the quorum
5 of the commission, review by the licensee or applicant who is the subject of the notice of
6 hearing after its service, review by the commission's legal counsel, or an appeal of a
7 decision by the commission to a court of competent jurisdiction; provided, however, if an
8 investigation authorized by this chapter results in the commission's filing a notice of
9 hearing or entering into settlement discussions with a member of the commission, the
10 commission shall immediately notify the Governor or the Governor's legal counsel of such
11 action by the commission. After service of a notice of hearing, a licensee or applicant who
12 is the subject of the notice of hearing shall have a right to obtain a copy of the investigative
13 record pertaining to the hearing. Nothing in this subsection shall prevent the commission,
14 in its sole discretion, from notifying persons who request investigations or the licensee or
15 applicant who is the subject of the notice of hearing of the receipt of a request for
16 investigation or the commission's disposition of the investigation nor from making
17 available to the public any document that becomes a public record during the hearing
18 process authorized by Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'"

19 **SECTION 10.**

20 All laws and parts of laws in conflict with this Act are repealed.